

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CHENG JAMES CHHEM,  
Petitioner,

v.

DAVID W. JENNINGS, et al.,  
Respondents.

Case No. [18-cv-04541-JCS](#) (PR)

**ORDER TO SHOW CAUSE**

Dkt. No. 2.

**INTRODUCTION**

Petitioner seeks federal habeas relief from his detention by Immigration and Customs Enforcement (ICE). The petition for such relief states cognizable claims. Respondents shall file a response to the petition on or before **December 15, 2018**, unless an extension is granted.

**BACKGROUND**

Petitioner, a native of Cambodia, has been held by ICE since September 2017 pending removal. In 1991, he was convicted in the Los Angeles Superior Court of murder. A sentence of 25 years to life was imposed.

**STANDARD OF REVIEW**

The Court may entertain a petition for writ of habeas corpus from a person claiming to be “in custody in violation of the Constitution or laws or treaties of the United States.”

1 28 U.S.C. § 2241(c)(3). A district court considering an application for a writ of habeas  
2 corpus shall “award the writ or issue an order directing the respondent to show cause why  
3 the writ should not be granted, unless it appears from the application that the applicant or  
4 person detained is not entitled thereto.” 28 U.S.C. § 2243.

5 Under section 2241, alien detainees can properly challenge “the extent of the  
6 Attorney General’s authority” to detain a removable alien under the general detention  
7 statutes. *Zadvydas v. Davis*, 533 U.S. 678, 687–89 (2001); *see also Denmore v. Kim*, 538  
8 U.S. 510, 516-17 (2003).

### 9 DISCUSSION

10 Petitioner alleges that his indefinite detention is unlawful under the Constitution and  
11 under 8 U.S.C. § 1231(a)(6). When liberally construed, the petition states cognizable  
12 claims.

### 13 MOTION TO APPOINT COUNSEL

14 Petitioner’s motion to appoint counsel is DENIED. (Dkt. No. 2.) The case does not  
15 present factually or legally complex issues nor are there other reasons justifying the  
16 appointment of counsel. 18 U.S.C. § 3006A.

### 17 CONCLUSION

18 1. The Clerk shall serve a copy of this order, the petition and all attachments  
19 thereto, on respondents. The Clerk shall also serve a copy of this order on petitioner.

20 2. On or before **December 15, 2018**, respondents shall file with the Court and serve  
21 on petitioner an answer showing cause why a writ of habeas corpus should not be granted  
22 based on petitioner’s cognizable claims.

23 3. If petitioner wishes to respond to the answer, he shall do so by filing a traverse  
24 with the Court and serving it on respondents within thirty (30) days of the date the answer  
25 is filed.

26 4. In lieu of an answer, respondents may file, on or before **December 15, 2018**, a  
27 motion to dismiss on procedural grounds. If respondents file such a motion, petitioner  
28 shall file with the Court and serve on respondents an opposition or statement of non-

1 opposition within thirty (30) days of the date the motion is filed, and respondents shall file  
2 with the Court and serve on petitioner a reply within fifteen (15) days of the date any  
3 opposition is filed.

4 5. Petitioner is reminded that all communications with the Court must be served on  
5 respondent by mailing a true copy of the document to respondents.

6 6. It is petitioner's responsibility to prosecute this case. Petitioner must keep the  
7 Court and respondents informed of any change of address and must comply with the  
8 Court's orders in a timely fashion. Failure to do so may result in the dismissal of this  
9 action for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

10 7. Upon a showing of good cause, requests for a reasonable extension of time will  
11 be granted provided they are filed on or before the deadline they seek to extend.

12 8. The filing fee has been paid.

13 9. Petitioner's motion for the appointment of counsel is DENIED. (Dkt. No. 2.)

14 10. The Clerk shall terminate Dkt. No. 2.

15 **IT IS SO ORDERED.**

16 **Dated:** October 10, 2018

17   
18 JOSEPH C. SPERO  
19 Chief Magistrate Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28